COMMONS ACT 2006, Section 15

CITY AND COUNTY OF SWANSEA
(Registration Authority)

RE: LAND KNOWN AS PICKET MEAD,
NEWTON,
SWANSEA

REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE ABOVE-NAMED AREA OF LAND

as

TOWN OR VILLAGE GREEN

CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by the Council of the City and County of Swansea ("the Council"), in its capacity as Registration Authority, to consider and report on an application, received by the Council on 17th January 2012, for the registration of an area of land known locally as Picket Mead, which lies next to (south of) Murton Lane, in Newton, Swansea, as a Town or Village Green under ***Section 15*** of the ***Commons Act 2006***. [I note in passing that the site's name is not infrequently spelt with two Ts, as 'Pickett Mead'; I shall use the 'Picket Mead' spelling]. The site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.

1.2. However the Council, in its capacity as owner of the site concerned, did not object to the application in this case. An objection was made in due course by the owner and developer of some adjoining land, as I explain further below. It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter, in its capacity as landowner.

1.3. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of the Objector(s). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

1.4. I was also provided by the Council as Registration Authority with copy documentation showing that the land in question (the application site) forms part of a larger area which is already registered with the Authority, initially under the ***Commons Registration Act 1965***, latterly under the ***Commons Act 2006***, as 'Common Land'. I was subsequently made aware that proceedings had taken place leading to the grant on behalf of the Welsh Government, by a Decision Letter dated 19th August 2013, under ***Section 38*** of the ***Commons Act 2006***, of consent for certain physical works to be carried out within the present application site, in connection with the development, pursuant to planning permission, of adjoining land to the south. The Applicant in those proceedings under ***Section 38*** had been the Objector in the present case (see below), Carrington Moore Estates Limited.

2. THE APPLICANT AND APPLICATION

2.1. The Application was dated 17th January 2012, and noted as received by the Council on that day; it was made by Mr Simon Arthur, who gave his address as 54 Summerland Lane, Newton, Swansea, SA3 4RS. Mr Arthur is therefore "the Applicant" for the purposes of this Report. The application form indicated that the application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. The application was supported by a considerable number of completed 'evidence questionnaires'.

2.2. On the question of the relevant 'neighbourhood' and 'locality', the form as submitted referred to a 'Map' accompanying the application. However it is my understanding that the only map or plan accompanying the application was one showing the intended extent of the application site itself. There was at that stage no map or plan showing a 'locality' or 'neighbourhood within a locality' to which the claim under ***Section 15*** was said to relate. Nor did the application document itself contain or refer to a clear description of the extent of any intended locality or neighbourhood, although there was wording in the 'Justification' given in ***section 7*** of the application form which could be taken as implying that the relevant neighbourhood was the village of Newton. In the event the identification of an appropriate neighbourhood or locality for the purpose of the application was a question discussed further by the parties in the context of the Inquiry which I held. I shall therefore return to the questions of 'neighbourhood' and 'locality' again in Section 11 of this Report, and I do not need to say anything else on these matters at this stage.

2.3. As far as the application site itself was concerned, its boundaries were fairly clearly shown on a plan which accompanied the application. I have already noted that the application site does not include the totality of the land in the area which is already registered as 'Common Land'

2.4. The site is currently (as I was able to see it) a reasonably well maintained but (when I visited it) mostly rather wet area of grassland, with a few trees and shrubs, largely towards its western side. A hard surfaced footpath runs within the site, situated towards (but not adjacent to) its western edge, between Murton Lane to the north, and Summerland Lane to the south-west.

2.5. A separate track, clearly used by vehicles, runs within the site from Murton Lane, close to the site's north-east corner, southwards to link to the off-site property centred on Picket Mead House. At its southern end, as well as seeming to provide access to land on the east side of Picket Mead House, the track turns westward for a short distance, and appears to provide further access to (off-site) land on the west side of Picket Mead House. I was told that, in the south-east corner of this part of the site, access was also available, and was sometimes used, to or from the ends of two long garden plots associated with properties other than Picket Mead House. This looked to be physically feasible, but the accesses concerned did not appear to be in such regular use as those to the land around Picket Mead House (which was undergoing development at the time of my site inspection).

2.6. The wider northern part of the overall site is relatively but not completely flat, whereas the long, fairly narrow south-western extension of the site slopes generally down from north to south.

3. THE OBJECTOR(S)

3.1. I have already noted that the Council of the City and County of Swansea, in its capacity as the owner of the area of land covered by the application, did not in fact seek to register any objection to the application.

3.2. An objection to the application was however submitted on behalf of Carrington Moore Estates Limited, as owners of neighbouring land at Picket Mead House, and beneficiaries of an easement which had been granted by the Council as landowner over the track or access road within the eastern part of the application site, which I have referred to above. Carrington Moore Estates Limited is therefore *"the Objector"* for the purposes of the remainder of this Report.

3.3. In the Objector's original objection (dated 23rd September 2013) the easement which I have mentioned above was referred to, but it was not entirely clear whether the objection, and request that the application be refused, related only to the application as it affected the track or access road, or whether it related to the application generally. In a further written clarification of its objection provided by the Objector, and at the Inquiry which I held, the Objector made it clear that, although its main concern related to the 'access road' or track across Picket Mead, it raised an objection to, and questioned the validity of, the application as a whole. That is the basis on which I have considered the matter. That this was the nature and extent of the objection being made was made clear to the Applicant in the material exchanged and circulated between the parties well in advance of the Inquiry, so there was no question of any party being surprised or prejudiced in terms of the case which it needed to meet.

4. DIRECTIONS

4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued Directions to the parties, drafted by me, as to procedural matters in September 2015. Procedural matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these procedural Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

4.2. In the particular circumstances of the present case, the Directions also raised the possibility that the Council itself, in its capacity as freehold owner of the land of the application site, and in spite of its not having either objected to, or expressed support for, the application, might wish to participate in or be represented at the

Inquiry. In the event however, this offer was not taken up, and the parties to the Inquiry were limited to the Applicant and Objector as identified above.

4.3. I also note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). These included, but were not limited to, the question whether it is in fact open to a Registration Authority to register as 'town or village green' under ***Section 15*** of the ***Commons Act 2006*** land which is already included in the Register of 'Common Land' maintained under a different provision of the same Act.

4.4. I consider this and the other questions raised, and the parties' evidence and submissions in relation to them, in the appropriate later sections of this Report.

5. SITE VISITS

5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the application site, unaccompanied. I also observed the surrounding area generally.

5.2. After all the evidence to the Inquiry had been heard, on 9th December 2015, I made a formal site visit to the site, accompanied by representatives of both the Applicant and the Objector. In the course of doing so, I was again able to observe parts of the surrounding area more generally.

6. THE INQUIRY

6.1. The Inquiry was held at the Civic Centre, Oystermouth Road, Swansea, over three days, on 8th, 9th and 10th December 2015.

6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Objector, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

6.3. As well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, some of which I have referred to already above. I report on the evidence given to the inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANT – EVIDENCE

Approach to the Evidence

7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of documents, largely consisting of completed evidence questionnaires.

7.2. Other written or documentary material was submitted on behalf of the Applicant [and also the Objector] in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. However, as is to be expected, and as indeed was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.

7.5. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, completed questionnaires, letters, etc. by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.

7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

7.7. ***Mrs Christine Humphreys*** lives at 16 Murton Lane, Newton, Swansea. Mrs Humphreys had completed one of the evidence questionnaires which were provided in support of the application.

7.8. Mrs Humphreys said that she has known the land of the application site as Picket Mead for at least 45 years. She has lived on Murton Lane for 33 years, and previously lived in Brooklyn Terrace, Newton.

7.9. The cinder track across Picket Mead has always been an integral part of the Mead, owned by the City and County of Swansea. Therefore in her view it belongs to the people of Newton as residents and tax payers.

7.10. The land is in regular use as a short cut through the village, and for recreational purposes such as dog walking, children's play area, jogging and occasional horse riding. Many people she knows she meets there regularly, as she is a regular dog walker who is there most days herself.

7.11. The Mead has always been an access route to the Church, Chapel, public houses, village shop and community hall. It is also used by a number of organisations such as the Scouts, Brownies etc.

7.12. She has never been asked if she has permission to use the Mead, or prevented from using the land. Nor has she ever felt she had to seek permission to use it. There has never been a notice, or any measures to prevent the use of the land by residents. She strongly feels that to give Picket Mead the protection of Village Green status is of vital benefit to the village of Newton for the generations to come. It is the only green space left in a highly built up area.

7.13. Both of her own boys went to Newton School and they have a strong connection with Newton. She had not seen any animals grazing on the Mead, but she has seen horses being ridden there.

7.14. *In cross-examination* Mrs Humphreys agreed that 1992 – 2012 was the period of particular concern to the inquiry. During that period her only personal use of Picket Mead would have been for dog walking and access. She walked dogs on the Mead during all that period. She walks dogs on the land every day. Whether she walks on the footpath or not depends on the condition of the Mead, but more often than not she walks across the Mead, rather than just on the footpath. She usually comes back from her walk the same way. Occasionally if it is very wet she goes along the pavement and along the cinder track and back. Indeed there are occasions when even the concrete path on the Mead becomes impassable through the wet. She does then tend to stick to the path though. She often goes on down St Peter's Road to the church. St Peter's Road is on the other side of Summerland Lane. There are also joggers who run along the drover's path on the land, as well as cyclists and dog walkers.

7.15. Children do play on Picket Mead. They will kick a ball around there when it is drier, usually in the summer months. It all depends on the amount of rain that has fallen. Also boys don't mind being covered in mud.

7.16. Mrs Humphreys had known that the Council was the owner of the land. She had heard reference to the Duke of Beaufort being the owner, but that was a historical myth. She had known that the land was registered as common land.

7.17. She had never felt she was trespassing, she felt she had a right to be there. It is an inviting space to go onto and to use. There are benches there, and litter and dog bins, etc.

7.18. *In re-examination* Mrs Humphreys confirmed that she did not typically walk on the area of the Mead directly in front of Picket Mead House.

7.19. *To me* Mrs Humphreys said that she had seen children playing and horses riding on the grassy parts of the Mead, if the conditions allowed. Parts of the Mead are boggier than others after wet weather.

7.20. ***Miss Eirwen Harry***, lives at 12 Melcorn Drive, Newton. She explained that that is off Summerland Drive near to the lower, narrower part of that road. Miss Harry had also completed one of the evidence questionnaires provided in support of the original application.

7.21. Miss Harry said that she wholeheartedly supports Picket Mead's village green status application.

7.22. She has lived a couple of hundred yards from the Mead since moving to Newton 19 years ago. She has walked it frequently for exercise, or to make a short cut to visit friends in Newton Lane or Highpool Close. She has also keenly enjoyed looking at the former façade of Picket Mead House with its almost ecclesiastical features.

7.23. No permission to use the Mead was ever needed. When she walks on the Mead she does walk across the area in front of Picket Mead House. It is a fascinating old building.

7.24. *In cross-examination* Miss Harry confirmed that she had lived in Newton for 19 years, and thought that she had started using this land in about 1997. She primarily walked on it, and had walked a neighbour's dog there. Typically she goes there via Summerland Lane, then up the path on the Mead, then she goes off to the right and has a look at Picket Mead House. Then she would go round via Newton Road making a loop. It is good exercise.

7.25. When on the Mead she does usually stick to the original drover's paths, but it depends on the weather. There is what is known as the Duck Pond, situated to the east of the north/south narrower part of the site just before you turn off to the right towards Picket Mead House.

7.26. She confirmed that she had seen children playing on the Mead with their parents, and also on walks with their parents. In former times she had seen bonfires on the

Mead, and recalled seeing cricket being played there. She had known that the land had belonged to the Council.

7.27. *In re-examination* Miss Harry said that the north/south path up the Mead is quite solidly surfaced. She confirmed that she herself had not seen the boy scouts on the land. However she knew that children had gone up to the land for activities; she simply had not seen them herself.

7.28. ***Mr Victor Collier*** lives at 26 Riversdale Road, West Cross, Swansea. Mr Collier had completed one of the evidence questionnaires lodged in support of the original application. Mr Collier said that he fully supports the application to designate Picket Mead as Newton Village Green. He is now 82 years old, and 32 of those years were spent living in the heart of 'old' Newton, centred on and fanning out from the junction of New Well Lane and Newton Road. He attended Newton School from the age of 4 to 8, and following education at Oystermouth studied at Swansea Technical College. He joined the RAF in 1952, but had a break in service from 1972 – 1982, during which time he again resided in Newton.

7.29. All his family, his father, his mother and 7 siblings lived in Newton, and their ever-enduring memories are centred on the Mead. He had been one of about 20 young boys of the village who made up a close-knit group which used the green regularly to socialise and play sport. They camped there, enjoyed bonfire nights and played at weekends and in the summer evenings, enjoying their own company, flying kites and playing rounders, cricket and football. They used to have a much respected football team with an official strip, and they played for several seasons against other village teams, from as far away as the lower Swansea Valley and all over the town. They were watched at times by sizeable local crowds.

7.30. During his service break from 1972 – 1982 he returned to Newton and again enjoyed frequenting the Mead with his three children. When he finally retired from the RAF he set up home in the nearby village of West Cross, having failed to find a suitable home in Newton, but again joined the wider family to enjoy social gatherings on the Mead. His daughter and her family (they have two teenage boys) have resided in Millands Close in Newton for many years, and he himself has played with his grandchildren on the Mead, and still to this day they walk their dog there. His daughter and family have lived where they now do from 1998.

7.31. The Mead has been precious to his family and the people of Newton as long as he can remember, and more so now as they see the loss of other surrounding open areas to development. The Mead remains a focal point and is home in a real sense to most Newton residents past, present and he hopes in the future.

7.32. He sees the Mead as the classic village green in every sense, and was truly shocked to learn recently that it was not designated as such. Indeed he was one of many Newton people who believed it had been officially recognised back in 1970. He passionately believes that the Mead belongs morally to the villagers. When he was

informed that part of it was to have a new access road over it he was and still is appalled at that decision. When he envisages that a large chunk of their beloved football pitch, including where they put their corner flag, is to be usurped, he and many others feel bitterness about it.

7.33. *In cross-examination* Mr Collier said he moved to West Cross in 1988. He has not resided in Newton since then. However he is a family visitor to Newton on an almost daily basis. Although he himself had completed one of the evidence questionnaires, he did not think that his daughter had done so. She might have but he was not sure. His daughter does use the Mead. She takes her share in walking the dog, and goes on the Mead often. Her sons are now aged 18 and 16. They have not provided statements; they are heavily involved in education.

7.34. A lot of local people thought Picket Mead had been registered as a village green in 1970. He agreed that in his 2012 completed questionnaire he said that it was common land. However he had always assumed that it was the village green of Newton. He had never contemplated that there was a restriction on the land which prevented anybody from using it.

7.35. *To me*, Mr Collier said, that when he completed his evidence questionnaire in 2012 he did not understand the significance of the difference between common land and town or village green, in terms of legal status.

7.36. ***Mrs Angela Williams*** lives at 155 Newton Road, Newton. Mrs Williams had completed one of the evidence questionnaires provided in support of the original application.

7.37. Mrs Williams said that Picket Mead had always been regarded as a village green, and only appeared to lack a formal title as such. She is a resident of Newton. She has lived in close proximity to the site since she was born, which is over 50 years. She still lives in Newton. Her brother, parents and grandparents had lived in walking distance of Picket Mead, as did she, no more than 200 yards away. They had all been brought up around the Mead, and she had taken her three sons up there, as she herself had been taken up there in her own early years.

7.38. The open space of the Mead gives a real sense of peace and quiet and well-being, and it is a beautiful place. Throughout her life they have used the Mead for playing tennis or bat and ball, looking for the wildlife in the pond, trees and hedges. They learned to ride their bikes along the cinder track around the front of Picket Mead House, and on the footpath. They had so much fun, and it is a safe place off the road which has now become very busy and dangerous.

7.39. She would meet up with her friends, sit on the Mead, make daisy chains for hours etc. They used to watch the lady riders pass over the Mead. They proudly walked

their horses across the Mead. She had tried riding herself but she is no horse person, unlike a friend of hers.

7.40. Their oldest neighbour would release his pigeons, and they would watch as they flew round and round in a perfect group. Their owner, called Winston, would come out onto the Mead and call them home. He would just stand at the entrance by his back gate onto Picket Mead. Everyone knows Winston even today. This is an area where you will always meet a friendly face, or even new people walking their dogs there, or just looking at the old house. It is a lovely safe place for an enjoyable walk; it is also that for some people who have no family and live alone. You would always end up chatting to other locals walking their dogs there as this is a very popular route.

7.41. Years ago they would look forward to bonfire night on the Mead. All the village children would get together to collect wood for the bonfire, make a Guy, and of course collect a penny for the Guy. What fun it was. They gathered on the Mead and enjoyed the bonfire evening, fireworks and all. There are still Guy Fawkes fireworks but not a bonfire. Rumour has it that safety was the reason, brought on by certain adjacent neighbours' concerns. The local children have never forgiven the removal of their bonfire while they were at school. It was a tradition of the village for a long period.

7.42. Her three children have all enjoyed the Mead, as she had done herself. They have used it for many things. Her boys and she would go out there. They strolled with her on many evenings over Picket Mead, they would kick a ball or just mess about. They had an electric car which they all shared, a Volkswagen with two seats which was called Herbie. They would drive up the cinder path to their uncle's, whose garden backed onto the cinder path, and then they would come back over the Mead, along the path and back home. They outgrew the car in time, so instead they learned to ride their bikes there. They flew a kite there and had it for years; it was a favourite place on the Mead for kites, as the winds can be very strong there. There were Beavers and Scouts, and on summer evenings they played cricket and other activities with other Beavers or Scouts or Brownies. Their hall is adjacent to the Mead and it is an ideal location. The Mead has always been well used by them. Obviously they were inside when it was raining, but they were out on the Mead when dry enough. The new Scout Hall was established in the mid-1970s and has carried on ever since.

7.43. Every group that meets at the Scout Hall uses the green open space of the Mead for activities, and they can run and jump and do anything they want in complete safety. That has always been the case for as long as she can remember, even before the new hall was in place. It is a worry that developers might have set their sights on the Mead and the possibility of building there. There is no other open space worthy of the name in walking distance of the core of Newton Village.

7.44. The Mead has never been formally designated for recreational use, nor have there ever been signs put up by Swansea City Council saying that it was a recreation

area. It is supposed to be common land, although she has never seen any commoner exercising a right of farm animals grazing there in 50 years. She had never been asked to leave the land or to stop any activity there, no matter what it was. There had never been a sign indicating what one could or could not do. In short they did what they liked there, without permission from anybody. They were never asked or told to remove the bonfire, except at the end when someone said it was a fire hazard after a complaint from the neighbours. She believed that some of the adjacent residents surrounding Picket Mead had expressed concerns about that.

7.45. *In cross-examination* Mrs Williams said that her three sons are now aged 19, 21 and 24. They had not produced evidence questionnaires or statements. Mrs Williams had not asked them.

7.46. She herself had learned to ride on Picket Mead when a child. She herself had also made daisy chains there. And then when her boys were growing up they also used the Mead.

7.47. There used to be some stables which are not there now, but people still go across the Mead on horses. The gentleman called Winston is now aged 92 but had lived there all his life. He used to release his pigeons there on the Mead until quite recently.

7.48. As for dog walkers, they walk all over Picket Mead and always have done. The bonfires on the Mead stopped in the 1980s because of the fire hazard that was complained about. There are still fireworks up on Picket Mead though, usually on the cinder track there, at the back of her brother's garden, 175 Newton Road. Her brother has a long garden running up to Picket Mead from Newton Road. The other long garden running from Newton Road up to Picket Mead belongs to the gentleman called Winston.

7.49. Part of Picket Mead is comparatively dry ground, it is not all wet. The Scouts for example use Picket Mead regularly for cricket when it is dry. She does not know if other people do.

7.50. She had known that the land was common land. She thought her brother had checked the commons register. She had not done a lot of research herself, nor had she looked at any Council records in relation to the land. She had not seen Council people there on the land cutting the grass. The grass grows and dies back. She knew however that the Council had provided benches and a dog bin. She had seen people sitting on the benches.

7.51. She had referred in her evidence questionnaire to a refusal for swings for a play area on Picket Mead for children. That was a reference to her understanding that the City Council had at one stage refused to provide swings for children to play on on Picket Mead.

7.52. *To me* Mrs Williams recalled that she might in the distant past have seen the grass being cut there. She confirmed that all her boys went to the Scouts who met in the hut to the west of Picket Mead. In summer time they were always out on Picket Mead playing. There were always people or children walking there with or without dogs. Some people would go straight across the Mead, some people would go off the track or onto the grass. However, when there has been heavy rain the ground is really boggy there.

7.53. ***Mr Alcwyn Jones*** lives at 169 Newton Road, Newton. Mr Jones had completed one of the evidence questionnaires lodged in support of the application.

7.54. He said he had lived in close proximity to Picket Mead all his life. He could personally confirm that the area of Picket Mead is as shown by the Applicant for village green status.

7.55. He said he was giving his evidence in complete support for the designation of Picket Mead as a village green. He and many others take the view that it should have been registered years ago. He has used the Mead from a very young boy to play just about any activity known, from horses, butcher's bike, bows and arrows to bonfires. He has run over it, played football, cricket, even mud ball fights, as there was a never ending supply of mud even that far back. They had had the privilege of growing up within a village, full of girls and boys, who all knew each other. They played and enjoyed the freedom of just being children, allowed to roam without fear and without danger.

7.56. To suggest that the Mead is or was not used is beyond belief. Even the Objector is purporting to be a local boy, as he mentioned his own boys playing on the Mead. He himself (Mr Jones) played and walked over every inch of Picket Mead from the old remnant of the duck pond to the stables in the far corner. Its entrance was straight onto the cinder track. Anyone who went to Newton School would have gone on nature study walks, as could be confirmed by the school teachers past and present.

7.57. Some games played there were so simple in his younger days. They were endless. Making daisy chains, holding a buttercup under one's chin to see if you like butter, simple things. Those they did on the Mead. Over the years pastimes evolve; some survive and some do not. Nowadays Mr Jones walks rather than runs over the Mead. He sees familiar dog walkers he has known all his life. He has seen the local Scouts and Girl Guides playing there over what must be the best part of 60 years. They played football, cricket and rounders, and engaged in a variety of other games, but only if conditions on the Mead allowed it.

7.58. The Mead has survived since and before Oliver Cromwell's visit to it, which is an historic fact. It is recorded in history books. It is said that he passed by on his way

to Ilston. Some of Mr Jones's neighbours had families who had lived for centuries in this corner of the village.

7.59. He understood from local stories passed down through the generations that it was said that Oliver Cromwell's troops camped in the area of the Mead.

7.60. He has two children who are now grown up. He and his wife introduced them to the Mead, and they ran and played and learned to ride their bikes there. They flew kites, played tennis on the dirt track, the very area the Objectors say no-one uses. His son was in the Scouts and his daughter in the Brownies and Guides. His son collected frog spawn which in turn grew into tadpoles and then frogs, and then his son released them. This annual event still occurs each year in Spring. Frog spawn is still there in the old duck pond area, and his own grandchildren carry on using the Mead as he does himself. His grandchildren's pastimes and recreations are various, some different from what his had been but they are ongoing. To say that any part of Picket Mead is not used would only show that whoever said it did not have knowledge of the life of the village and the village green.

7.61. The aim is to protect Picket Mead as it is without further loss, not even the track would be acceptable. The track is not there for Picket Mead House alone.

7.62. Picket Mead House was built around 1600 he thought, as just a jumble of a stone cottage and outhouses. It may indeed be that Picket Mead House was an encroachment on the original common.

7.63. In any event, whether by foot, horse, cart or motor car, the access route to it was used by various people.

7.64. He confirmed that the tarmacked footpath from the north to the south end of Picket Mead was put in in 1966. The path was earth before that.

7.65. He accepted that youngsters did not sign the evidence questionnaires: why would they?

7.66. When the Mead is dry people do use it more. He also understood that the grass of the Mead is cut from time to time by the Council.

7.67. *In cross-examination* Mr Jones said that a hedgerow along the western side of Picket Mead was there when he was young. The ground was not as wet then. It used to be more like a meadow, but changed when the waterworks to the west were put in and the previous hedgerow was taken away. His childhood was in the 1940s. He would go out to play with other children when no bombing was taking place during the war.

7.68. The tarmac path was then only an earth track, and then the tarmac path was put in which led to water being accumulated behind it. Also the old hedgerow is no longer a dam to keep water out.

7.69. During the period 1992 to 2012 his own use has predominantly been for walking on Picket Mead. There is nowhere on the Mead that he does not walk. He has met many people who go on the Mead to do just that. Also the duck pond is full of frogs.

7.70. His children were growing up in the 1960s and 70s. They have in fact provided statements. They are Mrs Williams and Andrew Jones.

7.71. A group of local people got together and objected to the suggestion in the local development plan process that development might take place on Picket Mead. The group got together as quite a large group with no need ever to advertise for people to join it. The group did seek legal advice to an extent. It was only a small amount of advice that was sought, to see how they should handle this case. Mr Jones knows that this land is registered common land, but it always should have been a village green. He knows that you can de-register common land. He had not known that he had a right to access this common land, he had simply used the land.

7.72. ***Mr Simon Arthur***, the Applicant, gave his address as 54 Summerland Lane, Newton. That is in fact his mother's house, and not where he currently lives. He now lives in Sketty, in Swansea but away from Newton.

7.73. In his evidence Mr Arthur said confirmed what he had said in his declaration and evidence questionnaire supporting the original application. He had lived in close proximity to Picket Mead for the majority of his life, about 39 years. The house where he lived is located about 200 – 300 yards from Picket Mead.

7.74. The vista of the Mead over the years has gradually changed, and the land has become a lot boggier. Today the Mead is slowly and visibly being degraded due to outside influences resulting from the removal of hedgerows, increasingly becoming a wetland and not being helped due to movement of excessive ground water. The land used to resemble a meadow but now appears as a wetland.

7.75. During his early years he often played on the Mead with friends, playing football, cricket, cycling and playing war amongst friends. They played more towards Picket Mead House as the ground was firmer there. He was a sixer in the local cubs located in the scout hut adjacent to the Mead, and they used the Mead for various group activities. Most of all he remembered learning the skills of tracking where he received his cub badge which he completed successfully, like many others. He also recalled the talk about the wildlife of the Mead and the variety of flora among the old hedgerows, indicating how old the hedgerows were. As far as he could remember most of his friends were members of the cubs and scouts.

7.76. The Mead was also a general meeting place, and there was a pond on the Mead which attracted Newts and Frogs. That was in the same place as the pond still is. He also recalled that his mother's friend made elderberry wine from elderberries possibly from the boundaries of the Mead, as she lived adjacent to the Mead.

7.77. He recollected that his class in Newton Primary School went over to the Mead for nature study, and they were encouraged to draw their findings on their return and displayed them on the wall. He also distinctly remembered the bonfires where many of the locals attended. It was the highlight of the year. Everyone was disappointed when the bonfire was stopped because of safety considerations.

7.78. On numerous occasions past and present he had walked in front of Picket Mead House and used the cinder track to avoid the centre of the Mead, especially as on one occasion he almost lost a shoe when it was sucked into the mud.

7.79. When they had 'Crofty' their lassie dog, they used to play on the Mead with it from about 1990 to 1996, like many other people do to this day. This was one of the main areas where he would take Crofty for a walk.

7.80. When the local development plan was under discussion by Mumbles Community Council, there was an error on the map which was produced which gave a boundary for Picket Mead which included people's gardens. He himself in that context had suggested that a village green designation would be a strong option for greater protection than the local development plan. They did not include the reservoir site in the application, as they believed at the time that it was owned by West Glamorgan Water Board.

7.81. The proposed village green on the Mead was used for the National Jubilee in 2012, for which there was a requirement to pay insurance.

7.82. He had seen children playing on the Mead, cycling, jogging, football, cricket. All these things he had seen over the years. Throughout his experience the Mead has been constantly used by locals. No-one had ever been restricted or access refused, no-one had had to pay or been told not to use it, to the best of his knowledge.

7.83. *In cross-examination* Mr Arthur said that he had used Picket Mead for walking, playing and taking the dog there up until 1996. Since then his use had not been as frequent as it had been when they had the dog. Nevertheless he does walk across the Mead sometimes, from Summerland Lane. Normally he walks on approximately the line of what is shown on the map as an east/west path just to the north of the grounds of Picket Mead House, because the ground is firmer there.

7.84. People do walk with dogs down the path, which can sometimes be awkward with flooding at the lower end when there has been a lot of rain.

7.85. All his activities on the land as a child were pre-1992. His use of the Mead has reduced since the family's dog had died. One grows out of things but then a new generation comes and uses the land. He accepts that the Mead has got boggier over the years. It does depend on the weather though. With decent weather there would be greater use of the Mead, although Swansea generally is a wet place.

7.86. He would not say that children do not play there because of that. For example there has been a tyre attached to a tree branch which children play on, and children make dens in the undergrowth. Nevertheless the house where he lived is not 'on top of' the Mead so he doesn't see everyone using it. He personally had not seen the scouts or brownies on the land in recent times, but he had seen a letter from the leader of the group saying that they do still use it. It would be most odd to think that people might be said to have been trespassing on Picket Mead.

7.87. Picket Mead does have the appearance of a public authority's open space. There had been an application for some swings to be put there but that was declined. However a bench was put in, and then it was replaced later. He thought that the benches on Picket Mead had possibly been provided by Mumbles Community Council. In the early 1980s he thought a bench had been put in and then renewed later, and then another one was put in more recently.

7.88. There was a Jubilee event in the summer of 2012 on the Mead, and then another event there shortly afterwards.

7.89. It used to be the case that flotillas and floats for the Mumbles Carnival used to start their route on the cinder track on Picket Mead. That ceased about the year 2000 he thought. The carnival floats used to start from Picket Mead. It was a cavalcade which then ended up in Mumbles itself. So Picket Mead was part of the procession route essentially.

7.90. As for chickens being seen on Picket Mead, they are put there by the gentleman called Winston who also has pigeons. His reference in his questionnaire to ferrets being walked on the land was a true reference, and it has happened since 1992. There is a lady from No.58 Summerland Lane who takes a ferret onto the land, on the path generally.

7.91. Mr Arthur had not done research as to when the land was acquired by Swansea Council from the Duke of Beaufort. The Gower Society said that the land had been bought from the tenth Duke, he understood.

7.92. There had been two petitions in relation to the land, which were against specific proposals, and to sound out people as to whether they wanted a village green.

7.93. He accepted that there had been some misreporting by journalists. They had wrongly suggested for example that Carrington Moore were proposing a development actually on Picket Mead; he accepted that it would be ridiculous to build houses on Picket Mead itself.

7.94. He and his colleagues had spoken to local residents and explained things to people. Some petitions were just left in the village shop. Then there was later a campaign in respect of the proposed grasscrete on the track.

7.95. The local development plan process had caused much uncertainty for local people. The village green application was not made in order to thwart development proposals. Mr Arthur had had no idea that there would be or might be another planning application. He and his colleagues had asked the Mumbles Community Council in relation to the application because they had no professional legal advice. They did ask the Community Council for assistance in this regard, but got none.

7.96. Mr Arthur was aware that the gentleman, Mr Philip Winston Williams, of 177 Newton Road, had been approached by a lady from Morgan La Roche for a statement. Other people in Newton Road had been asked for statements as well.

7.97. The core members of the group supporting Mr Arthur were obviously himself but also Mr Jones, Miss Harry, Mrs Humphreys and Mr Collier.

7.98. *To me* Mr Arthur confirmed that the proposed grasscrete on the track leading across Picket Mead to Picket Mead House had not been laid down yet. He understood that grasscrete was not recommended to be used on boggy land.

7.99. Local inhabitants are very concerned about Picket Mead, it is a very sensitive site.

8. **The Submissions for the Applicant**

8.1. In his opening submissions Mr Arthur said that he was acting on behalf of a local action group in favour of registration of Picket Mead as a Village Green. That group in turn represents local people who have regularly used Picket Mead, or have seen it being used, for well over the stipulated period of 20 years. This use has been for legitimate sports and pastimes. The right to make such use should be preserved in perpetuity.

8.2. The group are concerned that common land (which Picket Mead is currently registered as) can be de-registered at any time, which has already occurred in some

places. This is especially possible where the rights over the land, such as to graze 18 head of cattle or whatever, are the primary purpose of the common land. This application land has never been fenced in, implying that animals would be free to roam over the whole of the common. On no occasion during the relevant period at all has there been any mention of any such animals using the land over the past 20 years, making use of alleged commoners' rights.

8.3. Evidence would be produced by Mr Arthur and others in relation to their use of the land, and documentary evidence also showing how the land has been held by the City and County of Swansea. The Applicant's case was that there had been *"as of right"* use for lawful sports and pastimes on this registered piece of common land. There had been three historic drovers' ways over the land. Mr Arthur and his group believe that Picket Mead was wrongly registered in 1970 as common land instead of a village green.

8.4. The Council in its capacity as landowner had not made an objection to the village green application. Carrington Moore Estates Limited had not originally objected to the village green application, and had only raised a partial objection later on, when asked if they wished to make any comments or observations about the application. It was only in later submissions, relatively shortly before the inquiry, that it was argued on behalf of Carrington Moore that there was a complete objection to registration of Picket Mead as a village green.

8.5. 41 evidence questionnaires had been completed by inhabitants of the relevant neighbourhood, which Mr Arthur suggested was the village of Newton. That evidence shows that the land is in general use by the local community for informal recreation, rather than just occasional use by individuals. A good approach to the boundary of Newton as a neighbourhood would be to use the Newton Electoral Ward, whose boundaries have not changed during the relevant 20 years. [Plans were produced at the inquiry showing the boundaries of the Newton Electoral Ward].

8.6. The Application Site at Picket Mead is not the totality of the land which was registered as common land in the area. Indeed some parcels of that common land had been deregistered. The remaining acreage subject to the application was thought to be 2.52 acres or 1.02 hectares. It was understood that proceedings aimed at deregistering as common land some other parts of the common land might still be taking place.

8.7. The history of Picket Mead is understood to stem from its being manorial waste in the Parish of Oystermouth, where the local people used the land as an integral part of everyday village life in Newton. This was achieved through the use of drovers' paths connecting the cottages, farms and fields in every direction. These crossed the Mead historically and that still applies. Access was from the south or the north. And both these accesses and the Mead have been regularly used by locals in the

past and currently. There were old drovers' ways which converged on the Mead, many of which are still detectable as routes within Newton.

8.8. There are still remains of a duck pond on the site which can be clearly seen on the Ordnance Survey Map of 1900. That pond was an essential part of the manorial waste, and was used for the benefit of villagers. Villagers had the opportunity to water their livestock. This would be particularly useful for donkeys, geese, ducks and cattle. The Mead would also be a meeting place for local people. Even in recent times the duck pond has attracted the return of wildlife.

8.9. The removal of historical hedgerows around the duck pond and their replacement by stone and brick walling is an unacceptable substitute. There was also a removal of historic hedgerow along the boundary with the land believed to have been owned by the West Glamorgan Water Board. That resulted in the destruction of hedgerow which provided a natural wildlife habitat, and also acted as a dam discouraging groundwater movement over the Mead. That hedgerow was replaced by a chain-linked fence which destroyed the natural habitat and vista. After local complaints the chain-link fence was removed to be replaced by trees with no earth bank. That is what encouraged the free movement of groundwater. The Mead is becoming a sedge land instead of meadow land.

8.10. Water remains a problem on the land. The complete area of Picket Mead consists of a layer of boulder clay less than a foot below the ground, making it impervious to water and compounding the water issues that exist. That affects the playing area at certain times of the year, limiting many areas in terms of the pastimes they can be used for.

8.11. However the appearance of the Mead is inviting to its being used. When people do use it at wet times they can then be bogged down to quite a surprising depth.

8.12. The drovers' ways across Picket Mead have always been used by local residents in an unrestricted way. Commoners and local people have rights over the whole application land. Village green status can incorporate these drovers' ways for the benefit of all. It is notable that Swansea City Council regards Picket Mead as an informal village green or common land, and should be taken as having welcomed the application by providing no objection to it.

8.13. There appears to be a misconception that village green status could prohibit the inclusion of the drovers' ways. It is a historic fact that there has always been access to all neighbouring properties from the Mead. That has been accepted over many centuries. It is not the intention of the application for village green status to exclude anyone.

8.14. As for the question of a significant number of local inhabitants using the land, the number has to be sufficient to show that the land is in general use and not

occasional use by a trespass. Newton Ward had a population of 3,274 in the 2009 census, and the Mead is located in a developed village with its own school, chapel, church and amenities. The village layout is still very much centred around its traditional core, of which the Mead is an integral feature. All of this is supported by the evidence from local people.

8.15. As far as the question of neighbourhood and locality is concerned, Mr Arthur submitted that that could be regarded as being the area of Newton village, or the post code, or the Ward of Newton or indeed the community known as Newton.

8.16. The land of the application site refers to all of the land over which the inhabitants have indulged in lawful sports and pastimes, including any paths that cross the land. Those paths are capable of being part of a village green. Thus the registration of a track can fairly be regarded as part of the same land that has been used for lawful sports and pastimes. The cinder track across Picket Mead, proposed to be changed to grasscrete, is certainly not a private access just in favour of Picket Mead House. It is understood that the track was maintained by Swansea City Council in the past, and not by the previous owner of Picket Mead House (Dr Cousens).

8.17. The Applicant's view is that local people have used the claimed village green as of right, in other words in the same manner as people would if they had a legal right to do so.

8.18. Notices were put up in September 2015 on Picket Mead by the landowner, Swansea City Council, indicating that no cars are allowed to park on the common. That resulted principally from local residents complaining in relation to damage to the common. However there is no basis for thinking that Picket Mead has been formally provided by the Council for recreational use. This is not a case to which the principle of the ***Barkas*** judgment of the Supreme Court applies. Therefore the use by the local neighbourhood was not a statutory right here, rather it was 'as of right'. The ***Barkas*** judgment recognises that a local authority must validly and visibly commit the land to public recreation before the land can be exempt from registration as a town or village green. In this instance Swansea Council has not validly committed the land for recreational use. It is still registered as common land, even if only in name.

8.19. The kind of activities engaged in by local people on Picket Mead are absolutely the things which the courts have found to count as lawful sports and pastimes. Throughout the majority of the twentieth century these pastimes have evolved. For instance, during the 1920s and up to the Second World War, the flying of pigeons was a common pastime. Then that declined. The exhibited photographs show pictorial evidence of the variety of pastimes. The Mumbles Carnival commenced from Picket Mead common over many decades, ending around the turn of the millennium. Local inhabitants' witness statements indicate the variety of lawful sports and pastimes that have occurred over the generations. Indeed there used to

be stables located at the rear of 175 Newton Road up to the 1980s, and the Mead was used by horses from those stables, as of right. There are also numerous dog walkers who have used and continue to use the Mead.

8.20. The use of the Mead by local people has certainly taken place for well over the 20 years required. The use has been continuous and not interrupted for any significant period of time. The land is used when it is needed and available when required, and this has never been prevented by the owner. Local people continue to use Picket Mead daily. It thus follows that the legal criteria necessary to justify village green registration have been met.

8.21. In summary, the Objector concedes that the application land has been used by a significant number of inhabitants for more than 20 years. The application land and the relevant neighbourhood can be clearly identified. The Objectors have not proved or indeed claimed that residents were excluded from the land at any time. It is clear that the Objector does not appreciate the historical encroachment on Picket Mead Common. Very little paperwork has been supplied by the Objectors on any point. They have relied mostly on unproved assertions. No part of Picket Mead Common is used by right as opposed *"as of right"*.

8.22. In closing submissions at the end of the inquiry, Mr Arthur referred to a letter dated 26th January 2010 from the Open Spaces Society, which made observations about the application which had been made at that time by Carrington Moore Estates Limited to be allowed to lay grasscrete and underground services across the track on Picket Mead Common giving access to Picket Mead House. It is noted that Swansea City Council has granted an easement to Carrington Moore Estates Limited, but it is suggested that consent cannot be granted for illegal action such as driving on a section 193 common.

8.23. The Objector's suggestion that there is a knockout blow which prevents the application from succeeding is extremely presumptuous. It is jumping to conclusions prior to the end of official proceedings. The Objector's counsel conceded that use of the Picket Mead Common contravening ***section 193*** of the ***Law of Property Act 1925*** is potentially punishable by a fine.

8.24. The assertion by the Objector's counsel that common land is unable to be registered as town or village green is wrong in law. The facts of the case and the application of the law to it show that the submissions for the Objector should not be given any weight or relied on in determination of this application. The argument for the Objector in relation to implied permission is self-contradictory, as the Objector's counsel alluded to numerous witnesses arriving on the land. It is wrong to think that they would assume that they were being permitted to use the land by Swansea City Council as owners. The Objector's counsel has conceded that the witnesses did not feel like trespassers.

8.25. The suggestion that there was a statutory or implied trust for the public to use the land is in essence a smoke screen. There is no basis for concluding that there was such a trust and no evidence or documentation has been submitted on the point.

8.26. The Objector's suggestion that usage of the Mead for lawful sports and pastimes has not been adequately demonstrated is entirely rebutted by the witness evidence. It is accepted that the Mead has served a wide variety of uses within the auspices of lawful sports and pastimes.

8.27. The inquiry's attention was drawn to the two sets of petitions which had been put forward, one of which deals directly with the village green aspect. About 1,373 inhabitants in Newton had signed that petition. Newton village is a neighbourhood within a locality. There is also an ecclesiastical parish of Newton.

8.28. Any suggestion by the Objector that there is a lack of significant use is entirely refuted by the evidence of regular and daily use of the application land by a diverse range of inhabitants, e.g. dog walkers, joggers, cyclists, school children and pedestrians. This had applied during the whole relevant 20 year period.

8.29. It should also be noted that no minutes granting permission for the Objector to give evidence had ever been submitted to the inquiry. This case raises important issues of both law and fact. It is further complicated by the landowner's acquiescence in respect of breaches of their duties in relation to the protection of common land.

8.30. At the conclusion of his submissions Mr Arthur applied to amend the application in this case such that the disputed *"cinder path"* or access track leading to Picket Mead House, be removed from the application plan. The application would therefore seek that the residual area be officially determined as qualifying for town or village green status under section ***15(2)*** of the ***Commons Act 2006***.

9. THE CASE FOR THE OBJECTOR – EVIDENCE

9.1. ***Mr Charles Kaminaris*** lives at 59 Caswell Drive, Caswell, Swansea. He said that his parents live at 91 Summerland Lane, and have since the time when he moved to Newton with them as a youngster. He was away in Neath Port Talbot, around 2005 and 2006 probably, but he now lives in Caswell Drive with his wife and three children aged 12, 9 and 7.

9.2. He and his family used to use the footpath across the Mead regularly. When he was living with his parents he would walk dogs on the path. He and his present family walk that way with their children for various reasons.

9.3. The Mead can be extremely boggy underfoot. Hence they always put their dog on a lead. Mr Kaminaris himself would stick to the path because the land only rarely dries out. It is usually treacherous.

9.4. He recalled when there was some sort of fete held on the Mead about 3 or 4 years ago. It packed up early as the ground became very muddy and boggy and the children became filthy. His children do not use the Mead to play. It would be convenient but they never use it for that purpose because of the conditions under foot. He himself had never seen anyone playing recreationally on the Mead. He could not recall anyone using the Mead other than going across the path really.

9.5. He had had no involvement with meetings or petitions in relation to the site. He thought there had been some misinformation about it, for example people thought that building was being proposed on the Mead.

9.6. He moved to Newton in 1999 with his parents. He then went away to University in Cardiff, and lived in Neath Port Talbot for a short period of time. He moved back to Newton in 2004 and built his own property.

9.7. During the time that he has lived in Newton, he has always been aware that there is an access road running from Newton Road up to Picket Mead and to the back of various properties. He has over the years seen people using the road to access Picket Mead House both on foot and with vehicles.

9.8. He is aware that the access road along with the remainder of the land shown on the village green application all forms part of the village green application. Given the position of the access road and the fact that it is so well used in terms of access, he is not convinced that the road should have formed part of the application. That is on the basis that his understanding was that if the road is registered as part of a village green no one would be permitted to drive over it. That surely cannot be the case, given that it is the only way in and out of a number of properties.

9.9. Mr Kaminaris had never seen anyone using the access road for recreational purposes, only for access. However he had witnessed individuals walking dogs and using the large green area to the side of the access way for recreational purposes. He also understood that the land subject to the application is common land and that it is maintained by the Council in any event. In all these circumstances he supported the objection put forward by the Objector.

9.10. *In cross-examination* Mr Kaminaris accepted that the access route across the common may well provide access to the rear gardens of other properties in the corner of the common. He did not really accept that there were three distinct tracks or paths over the common. There was only the tarmac path down the western side of the land, and the cinder track leading to Picket Mead House.

9.11. He had never seen chickens on the land at the eastern side of the access track, nor flowers.

9.12. He did frequently walk across Picket Mead, until he and his family got rid of their dog a couple of months ago. Now he thought he visited Picket Mead every couple of days. The Mead would be ideal as a place for children to play except that it is very boggy. There is also a main road alongside. If it was less boggy it was debatable whether he or his family would use the land.

9.13. ***Councillor Anthony Colburn*** lives at 14 St Peter's Road, Newton. He explained that he is a member of the Council of the City and County of Swansea. He had in fact produced one of the completed evidence questionnaires in support of the application in this case, but was now giving evidence for the Objectors. He is also a member of the Mumbles Community Council.

9.14. Councillor Colburn said that he is 77 years of age, and has lived in Newton since 1966. Prior to that time he had lived elsewhere in Swansea. He had spent most of his spare time throughout his life in and around the Mumbles area.

9.15. Having had dealings with the Applicant group, and reread the evidence questionnaires and considered the plan attached to the application, he wished to update what he had originally put in his evidence questionnaire. When he made his original statements in the questionnaire in January 2012, he was all in favour of the application, and he remains firmly of the opinion that the majority of the land subject to the application should be registered as a village green if possible.

9.16. He is aware that in recent months members of the Applicant's group had approached Mumbles Community Council requesting that they take on and finance the cost attributable to the application and the public inquiry. The Community Council made enquiries of its solicitors as to the estimated cost of advice as to the viability of the application, and requested copies of all the relevant papers from the Applicants. Councillor Colburn had also obtained authority from the group to approach the solicitors acting for the Objector, and to suggest some sort of without prejudice meeting, along with an adjournment. Councillor Colburn had understood that in principle that was agreed between the parties.

9.17. He was keen to assist, having signed the original application and having a strong interest in preserving and protecting Newton generally. Nevertheless having reconsidered the application it was brought to his attention that an issue had been raised with regard to the usage of the access way across the common. He had been advised that the Objectors had taken issue with that area of land being registered as part of a village green. He had not appreciated the significance of this objection until he realised that if the access way is registered as part of a village green, then strictly speaking no-one will be able to drive over it. Clearly that would cause significant problems for the owner of Picket Mead House and for the Objector, as this is the only route in and out. It would also cause inconvenience for residents of

Newton Road, some of whom gain access to the rear of their properties via the access road on Picket Mead.

9.18. However, before talks took place the Applicants decided they no longer wished Councillor Colburn to be involved. While he had no problem with that approach, his concern was that the access way should never have formed part of the application, and that unnecessary costs are being incurred.

9.19. His personal first recollection of the access way was when he was a child. He used to walk up the access way in order to get to the stables there, which were run by a gentleman called Alfred Owen. He vividly recalled riding the horses and using the access way to gain access in and out. He also recalled the residents of Picket Mead House and those living on Newton Road using the access way in order to get to their properties. He particularly remembered a Morris 1000 associated with Picket Mead House being regularly parked on the cinder track.

9.20. Over the years that access way had been in pretty much constant use by local residents, and in particular those seeking to access their homes. He had witnessed vehicles passing and parked on the access way on a weekly basis. In terms of recreational usage, he could not say that he had seen anyone using the access road for recreational purposes. It is a cinder track which is not very attractive, and thus he cannot imagine that anyone would want to use it for recreational activities. He had over the years had other dealings in relation to this parcel of land, which is in fact owned and maintained by the City Council. Over the years he personally had fought to ensure that the land continued to be maintained by the City Council, and indeed that the grass is cut and other facilities such as the benches are maintained. He could confirm that all of those works are carried out at the expense of the City Council.

9.21. The object of his intervention in the matter had been to seek to save public money.

9.22. He recalled activities on the Mead, for example the Royal Jubilee Street Party, which was partly on the Mead, with people playing cricket and children playing games. Subsequently he could remember a function there with some small marquees, but there was some difficulty with boggy ground.

9.23. When he personally walks there he has stuck to the tarmac path, with his dog. After 1992, and prior to the ground becoming so boggy, it was well used by children as a play area. Then about 15 years ago the Council talked of stopping cutting the grass there. At that time it was still possible to play on the land; it was not so boggy. In the past 15 years or so he had not seen much activity on the boggy areas of the land. He had seen a few very muddy dogs, and also vehicles which had driven onto the land and become bogged down there. The grass on the land is now cut twice a year at most; that could be reduced. It was cut more regularly in the past, and cut down to a relatively short height. The cutting has

been less often for some years now. The grass is too long really for children to play ball games on the land, and this has been the case for at least 4 years or so.

9.24. *In cross-examination* Councillor Colburn said that he was attending the inquiry as a resident of Newton.

9.25. He could recall that there was a furore when a Candidate Site Notice in relation to the local development plan process was published in 2011, and parts of people's back gardens had been included in error within the site under consideration. Subsequently he became involved in proposals that an application should be made for town or village green status. Back at the time of the LDP process the City Council put everything they owned on the Candidate Site Register; in a lot of cases the land was very inappropriate for development, and people got upset. Picket Mead was an example of that. Councillor Colburn believed it had been submitted as a possible development site by a private individual. He himself had supported the proposal to register it as a town or village green. It is indeed still his wish that this area should be safeguarded for the future. Where he disagrees with the application is the inclusion of the driveway or access track.

9.26. He believed that Mumbles Community Council had supported the idea of this land becoming a town or village green.

9.27. He accepted that other properties bordered onto the cinder access track, and not just Picket Mead House.

9.28. ***Mr Andy Moore*** lives at 5 Buttercup Court, West Cross, Swansea. He said he was providing his evidence in his capacity as a former Director of Carrington Moore Estates Limited, the Objector. Carrington Moore Estates Limited was incorporated in 2008 for the purposes of the development of building projects.

9.29. At present the sole director of the Objector company is Mr David Carrington. Despite the fact that Mr Moore is no longer a director of the company, he is still heavily involved in running the business, and indeed with the development of the land at Picket Mead.

9.30. Mr Moore started visiting the Mumbles regularly about 14 years ago, which is when he first met his girlfriend, now his wife. He is originally from Cardiff. They would regularly visit Newton as that was where her parents lived. Her parents still live in Newton and have done so for at least 20 years.

9.31. He and his wife loved the area and so they decided to buy a house locally and to settle down. They therefore decided to buy a property at West Cross, which is less than 2 miles from Newton, in 2001. He and his wife have two small children who go to school locally.

9.32. He specifically remembers driving past Picket Mead House and the present application site when he first started visiting Newton. The house itself is quite a striking building and full of character. His understanding is that it is several hundreds of years old and has been a focal point in the village for many years. For many years however the property has been run down. He understood that the owner had been elderly and had let it fall into some disrepair.

9.33. When that property was put up for sale he discussed it as a potential investment with his co-director. Not only was the property itself quirky and full of potential; it was also surrounded by a substantial area of land. Mr Moore and his co-director therefore made arrangements to view the property and decided to go ahead with the purchase and submit various applications that would assist in the proposed development of the land.

9.34. They were advised that the land outside Picket Mead House was common land and that it was registered as such in 1970. Prior to purchasing the land they were also given sight of a statutory declaration by Dr Stuart Henry Cousens dated 25th September 2001. That statement by Dr Cousens detailed his knowledge of the right of way leading to the house.

9.35. On 24th September 2008 Swansea Council entered into a Deed of Easement with the Objector company relating to the access way. After a number of unsuccessful planning applications and appeals, a successful planning appeal achieved permission for development in the grounds of Picket Mead House, which permission was obtained in September 2012.

9.36. On 23rd November 2012 an application was made under ***Section 38*** of the ***Commons Act 2006*** for consent to carry out restricted works on common land. These works comprised the digging of a temporary trench to accommodate permanent underground service media, the construction of a grasscrete access road, and the installation of fencing while the works take place. Consent was given via a decision dated 19th August 2013. In September 2013 the Objector company sold Picket Mead House itself to Ms Julie Halliday.

9.37. The present village green application was eventually drawn to Mr Moore's attention, and clearly indicated the access road area leading to Picket Mead House as included within the application. He therefore instructed solicitors to look into the matter and to prepare a brief objection that was submitted by a letter dated 23rd September 2013. That was then followed up by a substantive objection of some length submitted on 6th October 2015.

9.38. Mr Moore noted in relation to the present application that it itself made reference to there being a public footpath over the land, and also to seats having been erected on the land in order to encourage recreational activities. He also noted that many

individual witnesses supporting the application had made specific reference to the public pathway over the land. Many of the statements supporting the application had also acknowledged that the land was owned and controlled by Swansea City Council, and/or that the land is common land. All of those statements are indicative of the fact that some of the applicants acknowledge that there is a public footpath open to all on the land, and that the Council ultimately has control over the land.

9.39. He was aware that a number of witnesses on the Applicant's side had made statements acknowledging the fact that there is and always has been an access way crossing the land to Picket Mead House and other property. From his own perspective the usage of that right of way could not have been more obvious, and indeed he produced photographs showing such use taking place. The condition of that access road itself is not good, and it is riddled with potholes. He himself has certainly never witnessed anyone engaging in recreational activities on the access road. The poor condition of that road would not lend itself towards sports and pastimes. All he has ever witnessed is that road being used for access. As far as he is aware the access road is in use on a daily basis by the current owner Julie Halliday and her workmen. It is also used by some of the residents of Newton Road.

9.40. It can be seen from a number of the photographs that the grassy land on the application site is extremely boggy and waterlogged. In his opinion when there is wet weather the land is virtually unusable as it is far too wet.

9.41. He had also noted that over the last few weeks the Council had erected signs on the land saying 'City and County of Swansea Land, No Parking'. This clearly demonstrates that the Council are in control of the land and they are attempting to restrict the usage of parts of it.

9.42. It is extremely surprising that some of the witnesses supporting the application, including Mr A Jones of 169 Newton Road, include people who actually use the roadway to obtain vehicular access to the rear of their own properties. Mr Moore did not think that Mr Jones had fully appreciated what he was signing in terms of the application, in terms of wanting the roadway registered as a village green, which would mean that neither he nor his family or visitors would be able to drive to the rear of his property.

9.43. Given that the road clearly must have been in situ for well over 100 years, Mr Moore was surprised to learn that none of the local residents who submitted questionnaires in support of the village green application made mention of the fact that there is an access road bisecting the land.

9.44. *In cross-examination* Mr Moore accepted that he had expressed support for a village green being established on Picket Mead back in 2011; he has no dislike for the concept of a village green in that general location. However the motives for the

application he thought were wrong. He also believed that there was sufficient protection for the land arising from its status as common land. The application in this case was simply not put together properly.

9.45. He is aware that common land can in theory be deregistered.

9.46. There are not really three paths over Picket Mead now. There is no east/west path visible in reality now.

9.47. Mr Moore said he had been familiar with Picket Mead for about 19 years; his wife and former girlfriend had lived in Caswell. Local people call it *"the Mead"*.

10. The Submissions for the Objector

10.1. I note that the original objection on behalf of the Objector company was made in a letter from its solicitors to the Registration Authority dated 23rd September 2013. That letter was in apparent response to a communication from the Registration Authority shortly before that date pointing out to the Objector the existence of the Applicant's application, and the fact that the application site appeared to include land in respect of which the Welsh Government had in a decision letter of 19th August 2013 granted consent to Carrington Moore Estates Limited under ***Section 38*** of the ***Commons Act 2006*** for certain physical works to be carried out on the common land, in connection with the intended development of some houses within the grounds of Picket Mead House to the south.

10.2. The objection letter of 23rd September 2013 appeared to focus on the aspect of the present application which affected the access road over which the Objector company had rights, and in respect of which it had just been granted the consent mentioned in the previous paragraph. It was suggested in the letter that the requirements of ***Section 15(2)*** of the ***Commons Act*** could not have been satisfied in respect of the part of the application site which constituted the access road. Nevertheless the letter of 23rd September 2013 concluded with a generally expressed request on behalf of the Objector that the present application should be refused.

10.3. On 6th October 2015 the solicitors for the Objector submitted a very much more substantial and fully reasoned written objection to the present application, in the context of the run-up to the Inquiry, which had already been announced, and as part of the Objector's actions aimed at complying with the Directions for the Inquiry which had been issued on behalf of the Registration Authority. Although further submissions were also made on behalf of the Objector at the Inquiry, as noted below, it was made plain that the written objections lodged in October 2015 were still relied on, and it is therefore appropriate that I seek at least to summarise that material in my Report.

10.4. It was pointed out that the land of the application site is in the freehold ownership of the City and County of Swansea, but the Objector did not know the purposes for which or the capacity in which the land was held by the Council. That limited the extent to which the Objector could comment on certain legal aspects of the matter.

10.5. The application land is already registered under the ***Commons Act*** as common land, and has been so registered since October 1970. On 24th September 2008 the Objector company entered into a Deed of Easement with the City and County of Swansea, in the latter's capacity as landowner, which granted to the Objector rights of vehicular and non-vehicular access over, and the placing of servicing under the land within the present application site which has generally been referred to as the access road or the access track.

10.6. Planning permission had been granted for the development of new houses on the land surrounding Picket Mead House, and a consent under the ***Commons Act*** had been granted by the Welsh Ministers for works to the access road over Picket Mead, which I have referred to above.

10.7. The present application under ***Section 15*** of the ***Commons Act*** had not properly identified or specified either a locality or a neighbourhood to which the claim was intended to relate. The obligation on an applicant for registration of a town or village green to establish on the balance of probability that a significant number of the inhabitants of a locality or neighbourhood had used the claimed green for lawful sports and pastimes for the relevant period was emphasised. Attention was drawn to the guidance which the Courts have given as to the way in which the terms *"locality"* and *"neighbourhood within a locality"*, within the legislation, should be understood.

10.8. In respect of the requirement that local inhabitants should have indulged in lawful sports and pastimes on the relevant land, the relatively broad way in which that requirement is interpreted was noted, but it is important to draw a distinction between use of the land as a whole for that sort of purpose and use of land as part of the using of formal or informal paths for getting from one point to another; thus trips or walks along paths which are really journeys to or from school, work or to conduct other daily business, such as shopping, would not constitute lawful sports and pastimes. Such use as there might have been for lawful sports and pastimes must also be more than trivial or sporadic. It was questioned whether the written evidence thus far lodged on behalf of the Applicant was sufficient to meet the requirements of the Act in these respects. There was lack of precision in the Applicant's material as to whether the requirement that a full 20 years user for the relevant period between January 1992 and January 2012 had been met.

10.9. Considerable attention was given in the October 2015 Objection to the requirement in ***Section 15(2)*** that the use made by local people of the land in question must have been *"as of right"*. Extensive jurisprudence has arisen around this question.

10.10. The burden of proof lies upon the Applicant in respect of all of the aspects of the statutory test. If an application fails on one element, it must fail overall. Where there is a fundamental flaw in an application, a claim cannot be rescued by success in relation to the other elements of the application.

10.11. Specific attention should be paid to the provisions of ***Section 193*** of the ***Law of Property Act 1925***. That section is headed "Rights of the Public Over Commons and Waste Lands". It provides that members of the public have rights of access for air and exercise to any land which is a common, which is wholly or partly situated within an area which before April 1974 was a borough or urban district. Before the local government reorganisation in April 1974 Swansea was a County Borough, and this land was even then within the area administered by Swansea County Borough Council. Therefore it appears that for at least the whole of the relevant 20 year period from 1992 to 2012 the application land as a whole was subject to statutory public rights of access for air and exercise. It follows therefore that use of Picket Mead Common by local inhabitants for lawful sports and pastimes was a matter of statutory right, and therefore could not meet the requirement for *"as of right"* use contained within ***Section 15*** of the ***Commons Act 2006***. The application must therefore fail.

10.12. Even if those rights under ***Section 193*** of the ***Law of Property Act 1925*** did not apply here for some reason, then nevertheless recreational user over the majority of the application land would have been authorised by ***Part 1*** of the ***Countryside and Rights of Way Act 2000***, which would have made the land *"access land"* within the meaning of that legislation. However it was acknowledged that these provisions of the ***2000 Act*** would not apply to a situation where the ***1925 Act*** provisions were already in force.

10.13. In submissions made by counsel for the Objector at the inquiry, it was argued further that the fact that the whole of the application land is registered common land is a *"knockout blow"* to this town or village green application. The land here was registered as common land in October 1970. It is a common which is wholly within an area which before April 1974 was a borough or urban district. Members of the public thus have rights of access for air and exercise under ***Section 193*** of the ***Law of Property Act 1925***. That fact was also recorded by the Planning Inspector who considered the ***Section 38 (Commons Act)*** application in respect of the land, when he recorded the views of the Open Spaces Society at that time. The common land rights under that legislation would encompass all of the lawful sports and pastimes claimed in this case. The courts have given a broad interpretation to such rights for air and exercise. The rights conferred by the land's status as common land have rendered any use of it by local people *"by right"*.

10.14. The point was repeated that the burden of proof in respect of all aspects of the ***Section 15 (Commons Act) 2006*** criteria falls upon the Applicant. If the application fails on any one element it must fail overall. The Applicant had still failed to identify a qualifying neighbourhood or locality, and until he did so the Objector was unable to make proper submissions on that element of the test, and as

to whether the evidence submitted is sufficient to demonstrate that there has been qualifying user by a significant number of the relevant inhabitants.

10.15. The key elements of the *"as of right"* test were analysed. It was pointed out that, as had been explained recently by the Supreme Court in ***R (Barkas) v North Yorkshire County Council*** [2015] AC 195, use *"as of right"* is effectively the antithesis of use *"of right"* or *"by right"*. In order for use to be as of right it is imperative that the use takes place without permission. The application land here is common land which has been registered as such since October 1970. Because of ***Section 193*** of the ***Law of Property Act 1925*** it follows that for the whole of the relevant 20 year period the application land was subject to statutory public rights of access for air and exercise. The case of ***R v Secretary of State for the Environment, ex parte Billson*** [1999] QB 374 was referred to. That case showed that rights of access for air and exercise on common land should be interpreted in the broadest possible way, subject only to limitations set out in ***Section 193*** itself. The rights conferred would therefore include all of the lawful sports and pastimes relied on in the present case.

10.16. The possible relevance of the ***Countryside and Rights of Way Act 2000*** as a fall-back position was again alluded to.

10.17. It was also arguable that permission can be inferred from overt acts which shows that the landowner was exercising its rights over the land and that the public's use of that land has been by permission. It is clear that Swansea Council in this case maintained the land and encouraged people to use it for lawful sports and pastimes. Indeed the Applicant himself had pointed out that the local authority maintains the Mead, and has erected seats. The Applicant also acknowledged that these matters represented a positive encouragement to enjoy recreational activities on the land.

10.18. It is also important to consider the quality and nature of the use which was made of the land in question, and how it would have appeared to a reasonable landowner. If use of a piece of land appears to be referable to formal or informal paths, as opposed to lawful sports and pastimes on the land, such activities may not found town or village green registration. The nature and quality of such use is a question of fact, but the decisive factor is how matters would have appeared to the reasonable landowner, with the benefit of any doubt being given to the landowner in favour of the lesser right, i.e. use of a footpath. In this case there are a number of references to the use of a footpath across the application land to cross from one side of the village to the other. That is not evidence of town or village green use and should be discounted.

10.19. One must also adopt a common-sense approach when considering whether qualifying use has in fact taken place over the whole of the application land. It seems clear that where an applicant is unable to demonstrate sufficient use over the whole of the application land, the Registration Authority is entitled to register only that part of the land where the statutory test has been satisfied. In this case there is

no evidence to indicate that recreational use took place on the access track on the land, which is unsurprising given that it is an unattractive rough cinder track. Indeed a number of witnesses have provided statements which say that although they saw people on other parts of the land using it for recreation, they never saw people using the track for recreation.

10.20. In submissions made at the inquiry it was argued that the only potential lawful sports and pastimes which are not covered by ***Section 193 (Law of Property Act)*** rights are the lighting of bonfires and the driving of an electric car on the land, which had both been referred to in some of the evidence. But it is a criminal offence to light fires on common land, under ***Section 193*** of the ***1925 Act***, and is also a criminal offence to drive any vehicle on common land without lawful authority. These pastimes, to the extent that they took place, would therefore not have been 'lawful' pastimes. If the vehicle concerned was only ever driven on the land to access the rear entrances to properties backing onto the common, that would have been a form of right of way use, not a *"lawful sports and pastimes"* use of an open piece of land. But the key point is that these could not have constituted lawful sports and pastimes on a piece of common land, because they are criminal activities to the extent that they were not lawfully permitted for some other reason, such as the exercise of an easement (a private right of way).

10.21. Events which had been referred to such as the Golden Jubilee party may also fall outside the ***Section 193*** rights, but they are also not lawful sports and pastimes since they do not constitute a sport or pastime. They also appear to have post-dated the relevant period in any event. It is also unknown whether permission had been sought from the Council to hold any of these activities on the land. The carnival procession which had been referred to seems only to have passed through the Mead en route. These activities would also demonstrate that the land was on those occasions in general use by a much wider community than the neighbourhood or locality relied on.

10.22. Other activities relied on by the Applicant which are probably not covered by the ***Section 193*** rights would similarly not be lawful sports and pastimes. For example the grazing of poultry on the land which the Applicant had referred to is grazing, not a pastime. Protests against the Objector company's development proposals are also not lawful sports and pastimes as such.

10.23. Accordingly any use for lawful sports and pastimes that was made during the relevant period was *"by right"* and not *"as of right"*. Common land in urban areas is in effect incapable of being registered as town or village green, even if this is no longer spelled out expressly in statute.

10.24. The ***Section 193*** right thus forms a complete knockout blow to the application, and there should be no need for the Registration Authority to have to go further and consider any of the evidence of any on the other elements of the test in ***Section 15***

of the ***Commons Act 2006***. However, if a different view were to be taken on this, there are a number of other reasons why the application is bound to fail.

10.25. This is municipal open space. It is clear that anyone arriving in the area would be in no doubt that the Council was inviting them to use it, as was confirmed by several of the Applicant's witnesses. There is a hard surfaced path, the grass is maintained, and there are benches and a dog litter bin. Local people had apparently asked the Council (although this was possibly the Community Council) to erect swings on the land, knowing that this is Council owned land and that they needed the Council's permission for new facilities (as opposed to access). The Council refused. This was apparently a question of resources, rather than an indication that people were not allowed on the land.

10.26. All witnesses confirmed that they did not feel like trespassers when they were on the land. That was a correct view; they were not trespassers; they had and continue to have a right to be there. In any event the Council's maintenance of the Mead and provision of facilities shows that permission was implied, and witnesses certainly understood this. This was a clear case of implied permission.

10.27. In fact this is just the kind of municipal land where there may well be (it was argued) a statutory or implied trust for the public to use it. The position is unknown, since no investigation has been carried out (as far as the Objector was aware) of the minutes and records pertaining to the original purchase by the Council of the land here. If the Registration Authority does not reject the application for other reasons, it should make investigations to satisfy itself that there is no express or implied statutory trust in this case. This is necessary to ensure that the decision is made on a proper legal basis.

10.28. Oddly, notwithstanding the inviting facilities provided by the Council, and the rights of access as common land, it was abundantly clear from the evidence that there has in fact been very little use, if any, of the vast majority of the Mead for at least the latter part of the relevant period. Various developments in the area, and the removal of hedgerows, have rendered the land extremely boggy. It has been noted by a witness that the land is ten times worse than it was before. The Council has also reduced the regularity of grass cutting, which is now only done twice a year, so that the grass is too long for ball sports, and was so at least by the end of the relevant period.

10.29. Thus, as Mr Kaminaris said, children do not play there, even if as in the case of his family, it would be the nearest open space to home. Similarly dog walkers using the tarmac path keep their dogs on a lead so that they do not come home covered in mud. That was also confirmed by several of the Applicant's entirely credible witnesses who said that nearly all walking, dog walking, jogging or cycling is confined to the paths. Even the ferret whose walking was referred to was apparently walked on a lead on the path. The tarmac track forms a direct short cut between Murton Lane and Summerland Lane; it provides a convenient access to

the church, chapel and shops, and is also used by school children. The only instance referred to by Miss Harry of people leaving the path was to go and see the duck pond or to step out of the way of school children. Such deviations from the path are still in the nature of 'path use' since they are ancillary or incidental to use of the path. Use that is referable to paths cannot found a town or village green application.

10.30. Mr Alcwyn Jones, no doubt cognisant of the line of questioning at the inquiry by the time he gave his evidence, sought to suggest that he had walked over every inch of the Mead and stood in puddles or ponds. His credibility must be called into some question, given the way the assertions of use of the grassy areas increased as the Applicant's case progressed, and given Mr Jones's clear involvement as part of the core group supporting the application, and his express opposition to people coming into the area and seeking to change it. In any event, even if he had walked over every inch of the Mead, that would appear to be contrary to the recollection of several others of the witnesses and would represent an isolated use.

10.31. The evidence suggested that children's games were necessarily confined to a very limited period during the summer when conditions on the Mead allowed it. It was highly relevant that none of the children referred to, despite being by now of adult or nearly adult age, gave any evidence whatsoever to the inquiry or in respect of the application. On the other hand the vast majority of the witnesses' evidence about sports and pastimes appeared to be from their own childhoods well prior to the start of the relevant period. It is unclear the extent to which the scouts or brownies used the land in the relevant period, and furthermore it is unknown if those children are from the claimed neighbourhood or locality, or indeed whether permission was sought from the Council for the use.

10.32. Once all of the use referable to paths or activities which are not lawful sports and pastimes are discounted, there is hardly any qualifying use left. That is wholly insufficient to establish the assertion of town or village green rights by a significant number of local inhabitants. It is far too trivial and sporadic, and there is no indication that the grassy area as opposed to the paths has been in general use by the local inhabitants throughout the relevant period. This is particularly so in relation to the latter part of the period when it is clear the land became increasingly boggy. No doubt some of the written evidence purported to relate to use of the land as a whole, but in principle that should be given less weight. Also one should not assume that the written evidence was about the relevant period rather than earlier periods. The written evidence as a whole was unreliable as to the relevant period.

10.33. As for the questions of locality or neighbourhood, the Objector accepts that the Electoral Ward of Newton is an administrative area and thus could be a qualifying locality, subject to having been in existence in its current form throughout the relevant period. That latter point is one for the Registration Authority to satisfy itself upon.

10.34. This area does not however appear from the map to be a good delineation for a neighbourhood, since it includes a large amount of open space, e.g. areas of beach and a golf course, and due to urban sprawl it appears that the Newton *"neighbourhood"* does not have identifiable boundaries any more. This fact was commented on by Dr and Mrs Peters who moved to the USA, and thus have in effect been able to observe 'snapshots' of geographical changes in the area when returning to visit. In their written statement dismay is expressed as to how the village quality of Newton has been eaten away by expanded housing areas and the disappearance of most fields and hedgerows. If a neighbourhood is to be relied on with the boundary of an Electoral Ward, the Objector has concerns that its northern and eastern boundaries, which bisect areas of close-knit housing, do not translate into clear boundaries on the ground such as to give it the necessary cohesiveness and distinct identity. In any event, where an administrative unit is proposed, as it has been here by the Applicant, then in the Objector's submission it should properly be regarded as a locality, not a neighbourhood.

10.35. Either way, the population of the area is apparently 3,274 (2009 Census). The trivial amount of use claimed in this case cannot possibly be significant in the context of that population.

10.36. The application in this case was put in as a result of misconceived fears about development of the Mead. This was fuelled by misreporting in the local press about the Objector company's proposals. No legal advice has been obtained by the Applicant. It became abundantly clear during the inquiry that local residents had not understood that a potential consequence of their application was to deny a right of vehicular access to several properties, which they purported to wish to protect. The application, and the Applicant's position, are wholly misguided and bound to fail for many reasons, but the clear knockout blow is that the public already have a right to use the land for air and exercise under the ***Law of Property Act 1925***.

10.37. It is regrettable that public and private money has been spent on this application. The application could have been resolved or rejected at an earlier stage. None of the Applicant's fears as to access, or protection of the Mead for use by the public, have any basis in reality. The public have and continue to have a legal right to use the land. The Objector company does not own the land, and therefore cannot do anything to stop them. Neither can the Objector stop people using the cinder access track for vehicular access to their properties. Local residents' fears are thus in any event unfounded.

11. DISCUSSION AND RECOMMENDATION

11.1. The application in this case was made under ***Subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. That section applies where:

> *"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have*

indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years."

and

"(b) they continue to do so at the time of the application."

The application in this case was dated, and received by the Council as Registration Authority, on 17th January 2012, so that date represents the 'time of the application', from which the relevant 20 year period needs to be measured (backwards).

Assessing the Facts

11.2. In this case there was some dispute in relation to aspects of the underlying factual background as to the history and extent of the use of this site over the relevant years. The law in this field puts the onus on an applicant to prove and therefore justify his case that all of the various aspects of the statutory criteria set out in ***Section 15(2)*** have in reality been met on the piece of land concerned.

11.3. To the extent that any of the facts were in dispute, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.

11.4. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point canvassed at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed 'evidence questionnaire' forms and the like, which have not been subjected to any such opportunity for challenge.

11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before explaining my overall conclusions, is to consider in turn the various particular aspects of the statutory test under ***Section 15(2)*** of the ***2006 Act***, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

Unusual additional aspects of this case

11.6. The historical background of this case has a number of somewhat unusual aspects, not all of which attracted substantial submissions from the parties at the Inquiry. The first of these perhaps was that the same council that is the Registration Authority, the City and County of Swansea, is also the freeholder of the land concerned (not in itself particularly unusual), but that the Council as owner is not among the objectors to the application.

11.7. I do not believe it is right to infer from that, as the Applicant seemed to do at one point, that the Council as landowner therefore *supports* the application. Rather I take it that the Council as landowner had decided to remain neutral in the matter in this instance.

11.8. The second somewhat unusual feature is that the land of the present application site is part of a somewhat larger area which is already included in the Registers maintained by the Council under the ***Commons Act***, but as 'Common Land' rather than Town or Village Green. It did appear once to be the case, within the original scheme of registration under the ***Commons Registration Act 1965***, that it was not possible for the same piece of land to be registered both as 'Common Land' and as a 'Town or Village Green'. However the legislative provisions which led to that consequence were repealed and not replaced when the ***Commons Act 2006*** was enacted, so that on the face of things there is no longer a bar on the same piece of land being in both categories.

11.9. I and the Registration Authority, in the Directions issued before the Inquiry, did invite the parties to consider, and if appropriate make submissions on, the point as to whether the same piece of land can lawfully be in the ***Commons Act*** Register in the two different categories. In the event neither party to the Inquiry (nor anyone else who provided material in writing) made any suggestion or submission that such dual registration is inherently impossible, under the present law.

11.10. There was some passing suggestion in the Applicant's representations that the original registration as 'Common Land' rather than village green had been an error, but that is a different point, and also one which was not pursued with any vigour in the Applicant's submissions. The Objector did forcefully argue a point, which I consider later, to the effect that because of the public's statutory rights to use common land in urban areas for 'air and exercise', it is *de facto* impossible to generate a claim by 20 years 'prescription' based on *"as of right"* use on a piece of such land; but that again is a different point.

11.11. I therefore take the view, and so advise the Registration Authority, that there is no inherent reason, based simply on the ***Commons Act*** legislation itself, why the same piece of land cannot be in the Register as both 'Common Land' and 'Town or Village Green'.

11.12. A third unusual feature of the factual background here is that, by the time this application has fallen for determination by the Registration Authority, there has already been a decision issued (by the Planning Inspectorate) on behalf of the Welsh Assembly Government, dated 19th August 2013, granting consent to the present Objector, under ***Section 38*** of the ***Commons Act 2006***, to carry out certain physical works on part of the present application site (the access track from Murton Lane to the land associated with Picket Mead House). It was my understanding from comments made at the Inquiry that these physical works had not yet been carried out.

11.13. Although this was a relatively unusual situation, in the context of a ***Section 15 (Commons Act)*** application, neither party argued that it had any particular or special bearing on the way the application should be determined.

11.14. The same applies to the further fact that the Objector company was the beneficiary of an agreement for a formal easement, to be granted by the Council as landowner, for the benefit of the land at Picket Mead House, allowing use of the access track, and the laying of 'service media' beneath it. That agreement had been entered into in September 2008.

11.15. Once again, although these facts were alluded to by both parties to the Inquiry, it was not argued that they have a direct bearing on the resolution of the present application.

11.16. Nevertheless I would observe that in my view it was entirely correct and appropriate, and in accordance with the principles of natural justice, that the Registration Authority should in these circumstances have drawn the existence of the Applicant's application to the attention of the Objector company, and invited it to consider whether it wished to make any comments or observations. The Objector in responding did indicate an objection to the Applicant's application. In my view it was further correct, and in accordance both with the principles of natural justice, and the ***Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007***, that the Registration Authority thereafter treated the Objector company as an objector whose representations and evidence should be considered in the determination of this application.

11.17. I make these observations because there appeared, in some of the written documentation lodged on behalf of the Applicant before the Inquiry, to be some implicit criticism of the Registration Authority for having allowed the Objector company's representations to be considered as an objection to the Applicant's application. I note however that the Applicant did not pursue with any force or vigour an argument of this kind at the Inquiry itself.

11.18. He did however draw attention to private correspondence dating from February 2012 between the Objector's solicitors and Mr Arthur himself, in which it had been

said that the Objector had (at that time) no objection to *"any application to register Picket Mead ... as a Village Green"*. While this might be mildly surprising in view of the Objector's subsequent position, it does not in my view detract from the correctness of what I have set out above, based on the formal correspondence and communications between the Objector's solicitors and the Council as Registration Authority, from September 2013 onwards, in which it was made clear that the Objector company does indeed object to the Applicant's application.

"Locality"* or *"Neighbourhood within a locality"

11.19. The Applicant's application as originally lodged had been deficient, in that although the answer given to the appropriate part of the application form (Form 44, section 6) had indicated that a relevant Map had been attached, there was in reality no such map. In fairness, the 'Justification' given in Section 7 of the application form had made some reference to the village of Newton; but it had not been indicated by the applicant what particular area was being put forward as the one to whose inhabitants the claim related, or whether it was being put forward as a 'locality' or a 'neighbourhood'.

11.20. This deficiency of the application as originally lodged was expressly drawn to the Applicant's attention by the Registration Authority in a letter dated 6th September 2013. In the event, however, it was not really dealt with by the Applicant until the material he produced in late 2015, in the run-up to the Inquiry, and at the Inquiry itself (December 2015).

11.21. In the Applicant's material produced before the Inquiry there was reference once again to the area of 'Newton Village' as the potential locality or neighbourhood. But there were also some rather confusing additional references to the local postcode area, the electoral ward of Newton, etc. An element of confusion on the part of applicants in relation to the 'locality' or 'neighbourhood' question is not entirely surprising (and indeed is quite common), as there is very little guidance in 'Form 44' which assists lay applicants as to the rather particular views which the higher courts have taken as to the meaning of the terms *"locality"* and (to a lesser extent) *"neighbourhood"*.

11.22. At the Inquiry itself Mr Arthur said that he relied on the Electoral Ward of Newton as the relevant 'neighbourhood', and plans were produced (with the assistance of the Registration Authority) showing the boundaries of that Ward. He and others gave evidence that they believed those ward boundaries had been the same for the entire relevant 20 year period, although that fact had not apparently been checked with the Council's officers responsible for electoral matters. (It clearly would be capable of being checked, if required).

11.23. Counsel for the Objector conceded that this Electoral Ward was capable of being a relevant 'locality' (if it had been in existence for long enough), but criticised it as a 'neighbourhood' on the grounds (in effect) of its being somewhat arbitrary and not 'cohesive' enough, and not having logical enough boundaries.

11.24. It appeared to me, from my observation of the area, that Newton is a fairly cohesive-seeming village, with its own character, even though parts of it seem to like to call themselves 'Caswell' (which, I was told, is locally perceived to have a slightly more 'upmarket' tone). That fairly cohesive village of Newton seems to be entirely within the electoral Ward of Newton, as shown on the map provided.

11.25. It is true (as was pointed out for the Objector) that the Ward also includes some countryside areas, mainly to the south and west, outside the obviously built-up village, and that on its eastern and north-eastern edges modern development has produced the result that the boundary runs through some built-up areas, with housing stretching away on either side of it.

11.26. It seems to me however that it would be unjust and somewhat perverse to hold that a 'neighbourhood' consisting of an historic village cannot exist for the purposes of this legislation just because modern development had produced the result that on some of its outer boundaries it merges relatively imperceptibly with neighbouring settlements or areas. It also seems to me not to cause any legal difficulties or potential injustice to an objector to take the view that a 'neighbourhood' can legitimately be understood to include the adjacent areas of relatively (but not completely) open land just outside its more built-up parts.

11.27. Thus the view I have formed from my observation of Newton itself, is that there is a cohesive neighbourhood of the village of Newton, and that (as it happens) the Electoral Ward called Newton represents a perfectly reasonable definition of its boundaries. I am fortified in taking this view by the point that the Electoral Ward of Newton seems highly likely to constitute a valid 'locality' as well, as the Objector in effect conceded.

"A significant number of the inhabitants"
"lawful sports and pastimes"
"at least 20 years"
"they continue to do so"

11.28. I am taking all of these aspects of the statutory criteria together, as they appear to me to be inextricably linked in this case.

11.29. The '*neighbourhood'* of Newton (Ward) apparently had a population of 3,274 in 2009. It is clear however from the case-law that 'a significant number' does not mean any particular percentage, and (in particular) does not necessarily mean that a high percentage of the total inhabitants must be shown to have used the land. It is more a question of the level of use being sufficient to show to a reasonably observant landowner that use was being made by the local community in general, and not just by isolated and sporadic 'trespassers'.

11.30. The evidence given to the Inquiry was entirely convincing that, over many decades, going back to the childhoods of those (in many cases elderly) witnesses who gave evidence, and of their own (mostly now grown up) children, the main grassy area of Picket Mead, to the west of the 'access track' to Picket Mead House, was quite well used by local people for a variety of recreational activities. Much of this went well back beyond the 20 year period of most relevance to ***Section 15(2)***.

11.31. This is not in the least surprising, as Picket Mead is an area of open grassy land, entirely unfenced on its boundaries to Murton Lane and Summerland Lane, and which was regularly maintained by mowing by the Council. There have also been benches placed on the land for people to use.

11.32. The evidence was also clear, however, that during more recent years (including a significant part of the most relevant 20 year period), changes along the boundaries of the land had produced the result that its surface has in large part become increasingly muddy and waterlogged for much of the year. This has clearly made it much more difficult and less agreeable to use, except during long, mostly dry periods.

11.33. The consequence, as was clear from the evidence given to me, is that there has been a much greater tendency in the latter years than hitherto, for local people using Picket Mead during wet periods to tend to confine themselves more to using the (relatively dry) tarmac path up the western side of the Mead, and the 'access track' itself, and one or two other parts of the Mead which have tended to stay rather dryer. It has become considerably less common for local people routinely to use the wide grassy area of the Mead generally, though the evidence did suggest that such use continues to take place, more particularly during dryer times of the year.

11.34. What are the implications of all this as far as the legal criteria are concerned? One must bear in mind, it seems to me, that the courts have held that the legal effect of the 'significant number' test is to express the requirement that it be shown that the land was in general use by local people, sufficient to get the point across to an observant landowner, rather than sporadic use by trespassers.

11.35. The conclusion which I have formed, on the evidence here, is that it must have been abundantly clear to the 'observant landowner' that this land (to the west of the access track) was in sufficiently wide recreational use by local people *"for a period of at least 20 years"*, even if the evidence also suggests that the general use had declined somewhat during the latter half (approximately) of the most relevant 20 year period.

11.36. I also conclude on the balance of the evidence that there was sufficient use of this land, during the *"period of at least 20 years"*, specifically for 'lawful sports and pastimes' on the land as a whole (west of the access track), as distinct from use of the western footpath, or of the eastern 'access track', or of any other 'through

routes' as means of crossing the land 'from A to B', and associated activities which were merely incidental to such crossings.

11.37. Undoubtedly the evidence did show that there is plenty of use of Picket Mead just for crossing it along (relatively) fixed routes, but that does not detract from my finding above that there has also been more general use of the land as a whole (west of the 'access track') for lawful sports and pastimes, for a period of at least 20 years. Such general use, on my understanding of the evidence, has continued, albeit at a reduced rate (as discussed above), right through to the date of the Applicant's application.

"On the land"

11.38. As I have already indicated in my preceding paragraphs, my finding that there has been a sufficient level of *"lawful sports and pastimes"* use by local people for at least 20 years is limited to that part of Picket Mead (the application site) to the west of the 'access track'.

11.39. By 'the access track' I make it clear that I mean the whole of the eastern access track from Murton Lane to the vicinity of Picket Mead House, including the part which then turns westward along the northern boundary of Picket Mead House. In other words I mean the entirety of the land over which the Council as landowner agreed to grant an easement to the Objector company. Several plans showing this access track were produced to the Inquiry, so all parties will be clear exactly which piece of land is being referred to.

11.40. It was perfectly clear to me that, unlike the position on the more grassy area immediately to the west, there was no substantial or convincing evidence showing that the area of the access track itself has been used to any significant extent for *"lawful sports and pastimes"*, as opposed to being used as a route of passage by people either in vehicles or, more commonly, on foot (there was also a small amount of evidence of equestrian use).

11.41. It is perfectly true that a significant element of the pedestrian use will have been by local people walking (with or without dogs) for health or recreation, but the evidence suggested that such use was typically more in the nature of walking a route or path than forming part of the use of the whole Mead more generally. Indeed the evidence also suggested that (particularly in the latter years) this walking of a particular route, including the access track, was considerably more regular than the 'lawful sports and pastimes' use I have found took place on Picket Mead more widely.

11.42. Therefore, if I were otherwise minded to advise and recommend that Picket Mead generally should be registered as a 'town or village green', I would nevertheless be recommending that the access track should be excluded from the area so registered.

11.43. That then leaves a narrow 'strip' of the present application site, of very uneven width, running down the extreme eastern side of the application site, between the 'access track' and the overall site's eastern boundary. Most of this strip is grassy, though there is some other vegetation, and the evidence also suggested that at least one adjacent resident might have planted some flowers on parts of this strip - though this was not obvious at the time of my site visit.

11.44. It was also suggested that the same (I understood) neighbouring resident had from time to time allowed some free range domestic fowl to 'graze' (if that is the correct term) on this narrow strip east of the access track. This evidence, such as it was, was rather sketchy and in any event does not amount, on my understanding of the law, to evidence that 'lawful sports and pastimes' were carried out to any material extent by the local inhabitants on the strip concerned.

11.45. I also note that this appears to be the strip, albeit a very narrow one at the relevant points, across which I was told, in evidence called for the Applicant, that occasional vehicular and other access had been taken for many years by the residents/owners of two long domestic plots whose frontages are on Newton Road (one of whom was Mr Winston Williams of No. 177).

11.46. I should also note again at this point that right at the very end of the Inquiry, at the conclusion of his closing submissions, Mr Arthur the Applicant finally decided to apply to amend his application by removing from it what he called the *"cinder path"*, which in the context was clearly understood by all present to mean the same thing as what I have called the 'access track'. Coming at that point in the Inquiry, the application to amend was not as helpful as it might have been. Had the issue been dealt with earlier, it might have been discussed in a more useful way between all in attendance – the Applicant and the Objector and myself.

11.47. As it was, in my view the Applicant, in terms of the common sense of the situation, made an error of judgment in not also applying to exclude from the application site the narrow strip to the east of the 'access track' or 'cinder path', as well as the track itself. However, for the reasons I now discuss in the remaining paragraphs of this Report, it would make no difference to my overall conclusion and recommendation whether the Applicant's very late application to amend is accepted or not.

"As of right"

11.48. I have already noted that the entirety of the application site, from 1970 onwards, has been included within an area of registered 'common land', initially under the ***Commons Registration Act 1965***, latterly under the ***Commons Act 2006***. It was also clear from the evidence, and not disputed by anyone, that the part of the present City and County of Swansea where Picket Mead lies was, before the local government reorganisation of April 1974, within the area of the previous County Borough of Swansea.

11.49. As such, it seems to be completely clear that (as the Objector has argued) Picket Mead, including the application site, has at all material times been a registered 'common' within a former 'borough or urban district'. As such it has, again at all material times, been subject to the express statutory right given to members of the public to use such commons *"for air and exercise"*, granted by ***Section 193(1)*** of the ***Law of Property Act 1925***.

11.50. It has also been completely clear, at least since the decision of the Supreme Court in ***R (Barkas) v North Yorkshire County Council [2014] UKSC 31***, if not before, that where the public have an actual *right* or permission to use a piece of land recreationally, there cannot be *"as of right"* use for such a purpose, so as to satisfy the ***Commons Act*** test. *"As of right"* means, effectively *"as **if** of right"*, i.e. people must have been using a piece of land as if they had a right to do so, but when in fact they did not.

11.51. In this instance I accept the submissions for the Objector that there was no convincing evidence at all of *"**lawful** sports and pastimes"* activities by local people on Picket Mead, in circumstances when those people did not already have a clear statutory *right* to be indulging in those activities there. The application must therefore fail, in my opinion, on this important point of law.

11.52. I have noted that the Objector also argued that members of the public would additionally have had the right to use at least some of Picket Mead common, for the latter part of the relevant period, under the 'access land' provisions introduced by the ***Countryside and Rights of Way Act 2000***. However, on the facts here the legal position is so clear, in my opinion, under the ***Law of Property Act 1925*** that it is unnecessary and confusing to base the decision on another partially relevant provision of later legislation.

11.53. Somewhat similarly, I note also that the Objector argued that because of the small number of benches that have been positioned towards the periphery of this land, and the fact that the Council with reasonable (if not great) regularity has kept the grass mowed, there was an *"implied permission"* given to local and other people to use the land recreationally. If this land had not already been urban common land in the ownership of the Council, with statutory rights for the public to use it, this argument of 'implied permission' would have been worthy of consideration, but I do not think I would have found it particularly persuasive, given that the Supreme Court in ***Barkas*** made it clear that open, accessible land belonging to local authorities is not automatically exempt from 'town or village green registration'. There has to be something more than just openness and availability.

11.54. In this case, of course, that 'something more' is abundantly present, given the public's clear statutory rights to use Picket Mead for 'air and exercise'.

Final conclusion and recommendation

11.55. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has ***not*** succeeded in making out the case that any part of the application site (or the amended, smaller application site to which the Applicant referred in final submissions) should be registered pursuant to ***Section 15(2)*** of the ***Commons Act 2006***. In particular he failed to establish that any part of the land was used *"as of right"* for the requisite purposes or period, within the legal meaning of that expression.

11.56. Accordingly, my recommendation to the Council as Registration Authority is that ***no part*** of the land of the application site should be added to the Register of Town or Village Greens, pursuant to the Applicant's application under ***Section 15(2)*** of the ***Commons Act 2006***, for the reasons given in my Report.

ALUN ALESBURY
5th February 2016

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT – Mr Simon Arthur

He gave evidence himself, and called:

Mrs Christine Humphreys, of 16 Murton Lane, Newton

Miss Eirwen Harry, of 12 Melcorn Drive, Newton

Mr Victor Collier, of 26 Riversdale Road, West Cross, Swansea

Mrs Angela Williams, of 155 Newton Road, Newton

Mr Alcwyn Jones, of 169 Newton Road, Newton

FOR THE OBJECTOR – Carrington Moore Estates Ltd

Miss Annabel Graham-Paul, of Counsel

Instructed by: Morgan LaRoche, PO Box 176, Bay House, Phoenix Way, Swansea SA7 9YT

She called:

Mr Charles Kaminaris, of 59 Caswell Drive, Caswell, Swansea

Cllr Anthony Colburn, of 14 St Peter's Road, Newton

Mr Andy Moore, of 5 Buttercup Court, West Cross, Swansea

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB This (intentionally brief) list does ***not*** include the original application and supporting documentation, the original objections, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, paginated bundles of documents produced for the purpose of the Inquiry, on behalf of the Applicant and Objector, all of which were provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANT:

Written Outline of Legal Closing Submissions

FOR THE OBJECTOR:

Written Note of Closing Submissions

BY THE REGISTRATION AUTHORITY:

2 plans (1:2500 and 1:10,000) showing boundary of Newton Electoral Ward